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ABSTRACT

Directed at school officials, this paper describes selected civil cases filed against schools since 1976. Cases concerning handicapped students constitute most of such cases; those cited deal with discipline (S-1 v. Turlington) and appropriate residential placement (Hine v. Pitt County Board of Education) of a handicapped child. Discipline cases are also numerous, especially regarding student search (M. M. v. Ander) and corporal punishment (Hall v. Tawney). Sex discrimination in school sports is a frequent charge (O'Conner v. Board of Education). The equal protection case cited deals with school segregation (Adams v. United States). Religion and schools is a hot issue (Widmar v. Vincent; Brandon v. Board of Education). One case (Thomas v. Board of Education) deals with off-campus school publications. Another First Amendment case (Fricke v. Lynch) deals with the right of association. Book banning is at issue in a case to go before the Supreme Court (Pico v. Board of Education). Graduation requirements were challenged by a Missouri case (State ex. rel. Miller v. McLeod). Finally, violence between students formed the basis of another case (Gammon v. Edwardsville Community School District). The paper ends with brief recommendations for avoiding suits. (Author/JM)

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TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

North Central Association
Chicago, Illinois
March 30, 1982

WHY WILL STUDENTS TAKE YOU TO COURT?

Floyd G. DeJon

When North Central asked me to speak on this topic I debated with myself for some time before deciding what to do! I think you will agree that it is a rather fascinating title which has at least two meanings:

1. What motivates students to initiate a lawsuit against you (school officials)?
2. What is the basis for students' suits against you (school officials)? Since I'm not a psychologist, I had better stick with the second interpretation.

In a statistical sense, the National Center for State Courts has provided good baseline data. Last year this organization completed a study of civil cases filed in courts after 1976. Of the 1632 cases identified, nearly one half (769) dealt with rights of the handicapped. The second most frequent basis was dicipline (290), and third, regulation of sports (186). These were followed by suits alleging violation of constitutional rights--equal protection (165), freedom of religion (73), speech and privacy (65). A category called benefits and services (121), "academic matters" (30), and "other cases" (35).

We will examine some of the recent cases in each of these categories and identify directions the law appears to be going. Then, I have a few suggestions for you and will attempt to respond to questions.

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1. It probably did not come as a great surprise to you that within the past four years, "rights of the handicapped" produced the greatest number of cases. Since the enactment of P.L. 94-142, a number of disputes have reached the courts challenging the appropriateness of placement decisions by school officials.

In North Carolina, in Hine v. Pitt County Board of Education,[1] parents of an emotionally disturbed child brought action seeking an order declaring the present placement inappropriate, an injunction compelling the state to provide free appropriate education for the child, one hundred thousand dollars in damages and attorney's fees. They charged violation of rights under not only the federal statutes on rights of the handicapped but also 1983.

The child, eleven years old, had suffered emotional problems since his pre-school years. These problems were evidenced by frustration, hostility, and inability to relate to other children. He attempted to run away while in kindergarten. His difficulties continued in the first grade, and when he became noncommunicative, his placement was changed to the learning disabled class. Although promoted to the second grade, he was returned to the first grade. After another year in the first grade, he was again promoted. Here, his problems multiplied. He became more aggressive toward other children. In the third grade his withdrawal behavior and refusal to communicate resulted in a decision by an administrative placement committee, IEP, to send him to school for the emotionally handicapped.

The placement in the special school did not provide a solution to the boy's problem. There he refused to be quiet and again showed agressive behavior toward his classmates. He told the principal on one occasion

"that he hated everyone, including himself, and that he wanted to kill himself." He started beating his head on a concrete wall, pushed over desks, and ran away from school.

After extensive evaluation at North Carolina Memorial Hospital, the personnel there diagnosed him as "schizoid personality" or "isolated personality" but did not rule out "childhood schizophrenia." Recognizing that appropriate placement was not available in the district, they recommended " some residential treatment center."

Nonetheless, he was returned to the special school. School officials employed an additional aide solely to help deal with the child's needs. This arrangement also proved unsatisfactory and the child was assigned to homebound instruction. The "homebound" teacher testified that she did not believe her efforts were successful. The placement committee recommended that the boy be placed in the Children and Youth Unit of Cherry Hospital.

The parents appealed this placement whereupon a hearing officer held that it was inappropriate. On administrative appeal the state department of education representative overturned this determination and the parents began the present action.

After a thorough analysis of the provisions of the statutes and regulations, the court presented a detailed list of findings of fact and conclusions of law. In agreeing with the hearing officer's decision that the proposed placement was inappropriate, the court noted particularly the fact of the need for peer group representation (the child would be the youngest child in the school). The court enjoined the defendants from denying the child a free appropriate education and ordered that he be placed in one of the three residential facilities identified as appropriate placements. Monetary damages and attorney fees were denied.

Questions have arisen concerning discipline of the handicapped. In the S-1 v. Turlington,[2] the plaintiffs were seven handicapped students expelled from a Florida high school. Each plaintiff was mentally retarded. Their misconduct ranged from masturbation or sexual acts against fellow students to willful defiance of authority, insubordination, vandalism, and the use of profane language. They brought this action, alleging violation of their rights under the Education of All Handicapped Children Act (EHA) and Section 504 and for injunctive relief compelling the state and local officials to provide them with the educational services and procedural rights to which they were entitled under these statutes. The district court granted the preliminary injunction, and the defendants appealed.

The appellate court dealt with five basic issues in the case. On the first issue the court agreed with the Stuart v. Nappi[3] holding that the expulsion of a handicapped child is a change in placement requiring all the procedural protections of P.L. 94-142. While the court on the second issue found that expulsion was a proper disciplinary tool for use with handicapped students, it was unwilling to authorize the complete cessation of educational services during the expulsion period. The court's holding on the third issue was that if expulsion were used the burden was on school officials to show that the misconduct was unrelated to the child's handicap. The fourth issue, as did the first, dealt with the right to the specific procedural safeguards of EHA; again, the court held that these must be provided even when the student voluntarily withdraws from school or previously agrees to an educational placement. Finally, on the fifth issue raised, the trial judge did not abuse his discretion in granting the injunction.

2. Turning to the area of "Discipline" as applied to nonhandicapped students. Another unsettled area of law, the scope of Fourth Amendment protections against unreasonable searches and drug-detection dogs in schools, has received a great deal of attention from the courts in the past two years.

For example in the Second Circuit, in M.M. v. Anker,[4] a fifteen-year-old girl charged that she was illegally searched. After a fire drill she was found crouched behind a door holding another girl's pocketbook. She had also taken down classroom posters to give to her sister. The dean of women summoned the girl to her office and began the search. Upon request, she dumped her book bag onto the table. The dean reached for a bus pass holder but the girl grabbed it. The dean thought she saw a marijuana pipe in the holder. After first refusing to surrender the holder, the student threw it on the table; it fell to the floor and was again retrieved by her. Before she finally gave the holder to the dean, she made a tucking motion at the waist band of her jeans. A futile attempt was made to find the pipe, and then the dean summoned female security guards who conducted a strip search (down to her underwear). This effort also produced nothing.

At trial, a jury found that the administrators had reasonable grounds for the search and that the search did not unreasonably intrude on the girl's privacy. However, the judge held (notwithstanding the verdict) that the plaintiff's Fourth Amendment rights had been violated. He noted that the administrator's action did not even meet the "reasonable suspicion" standard normally applied to administrative searches.

The Second Circuit Court affirmed agreeing that the initial search was based only on the thought that the student might have stolen some

unidentified object. While the court left the "reasonable suspicion" standard essentially intact, the court went on to say that as the intrusiveness of the search increased,

> the standard of the Fourth Amendment, "reasonableness," approaches probable cause, even in the school context. Thus, when a teacher conducts a highly intrusive invasion such as a strip search in this case, it is reasonable to require that probable cause be presented.

The court upheld damages of $7,500.

A corporal punishment case, Hall v. Tawney,[5] has again reached the federal court of appeals level. Parents of a minor female student brought this 1983 action against the teacher, principal, and other school officials charging that the paddling by the teacher violated the student's procedural and substantive due process rights as well as equal protection of the laws under the Fourteenth Amendment and her Eighth Amendment right to be free of cruel and unusual punishment. The parents also claimed that their substantive due process rights were violated when they were deprived of the opportunity to determine how their daughter was to be punished.

The complaint contained the following allegations concerning the incident:

> Tawney (the teacher) "without apparent provocation struck the minor plaintiff with a home-made paddle, made of hard rubber and about five inches in width. . . across her left hip and thigh"; that in the ensuing struggle with the plaintiff he "violently shoved the minor plaintiff against a large stationary desk"; that he then grasp and twist the plaintiff's right arm and pushed her" into the presence of Claywell (principal) who then granted permission to Tawney to "again paddle the minor plaintiff" that the minor plaintiff was again "striken repeatedly and violently by defendant Tawney with the rubber paddle, under the supervision and approval of defendant Claywell"; that as a result of this application of force "(she) was taken that afternoon to the emergency room. . . where she was admitted and kept for a period of ten days. . ."; that for injuries inflicted the minor plaintiff was "receiving treatment of specialists for possible injuries to her lower back and spine. . . . . .

Relying on Ingraham v. Wright,[6] the trial court dismissed the entire action. The parents appealed pressing only the substantive due process claims.

After affirming the dismissal of the parents' substantive due process claim, the court considered the contention that the pupil's substantive due process rights were violated. Noting that the Supreme Court had declined to review this issue in Ingraham, the court turned to the Fifth Circuit Court ruling in that case. The Fourth Circuit agreed with the dissenting judge that a valid cause of action could be stated for violation of substantive due process rights under 1983. The court explained:

> As in the cognate police brutality cases, the substantive due process inquiry in school corporal punishment cases must be whether the force applied caused injury so severe, was so disproportionate to the need presented, and was so inspired by malice or sadism rather than merely careless or unwise excess of zeal that it amounted to a brutal and inhuman abuse of official power literally shocking to the conscience.

The portion of the lower court judgment dismissing the substantive due process violation complaint against the teacher and principal was reversed and remanded for further proceedings.

3. In the area of "sport cases", discrimination is a frequent charge. It is safe to say that a majority of the sex discrimination cases involving students were brought to assert a right of participation in school sports. The enactment by Congress of Title IX in 1972 did much to eliminate inequities between boys and girls in opportunities for participation. However, disputes continue to arise as illustrated by a case, O'Conner v. Board of Education,[7] that was finally ruled on by Justice Stevens sitting as a Circuit Justice.

The plaintiff is an 11-year-old sixth-grade student, 4'11" tall and weighing 103 pounds. For four years she successfully competed with boys in organized basketball programs. After observing her, a professional basketball coach rated her ability equal to that of a female high school sophomore player or that of a male eighth-grade player.

Because of a conference rule prohibiting boys and girls participating together in contact sports, the request of the girl's father that she be permitted to try out for the bays' basketball team was denied. In bringing this litigation, the plaintiff asked for: (1) a temporary order permitting the plaintiff to try out, and (2) a permanent order allowing her to play if she made the team. Concluding that the girl had a constitutionally protected interest in equal access to training and competition, the district court granted the temporary relief requested. (The tryouts were scheduled to begin on October 27, 1980.) The district court refused to grant a stay of its injunction pending appeal.

Following these rulings, school officials postponed the tryouts and appealed to the Seventh Circuit Court. On October 27, a three-judge panel on a split vote granted the requested stay without an opinion. Two days later the total court voted 5-3 to continue the stay pending the appeal. Justice Stevens then considered the request to dissolve the stay.

In deciding whether sex could be used as a criterion for eligibility, Justice Stevens said:

> It seems to me that there can be little question about the validity of the classification. . . . Without a gender-based classification in competition contact sports, there would be a substantial risk that boys would dominate the girls' program and deny them any equal opportunity to compete in interscholastic events.

Noting that the defendants' program appeared to be in full compliance with Title IX regulations, the Justice said: "Although such compliance certainly does not confer immunity. . . it does indicate a strong probability that gender-based classification can be justified." The plaintiff's petition to vacate the stay was denied.

The Supreme Court refused the review this case. In light of Justice Steven's statement it seems probable that the Title IX provision on contact sports will survive.

4. Turning next to "equal protection" cases. The case selected for review today is one in which the court stipulated: "Segregation in the elementary and secondary schools in St. Louis must now be eliminated." Adams v. United States[8] The opinion provided suggestions as to how that mandate is to be accomplished, but the development and implementation of a workable plan has presented many difficulties.

The Eighth Circuit Court's opinion began with a review of the long history of governmentally imposed segregation in the state and the school district. Following the Brown decision, the St. Louis Board of Education implemented a plan to desegregate its system based on the "neighborhood schools" concept. The appellate court noted that the new plan failed to change the segregated nature of the system. In addition to the former black schools remaining all black and the former white schools (in white neighborhoods) remaining all white, the former white schools in black neighborhoods turned virtually all black immediately. Moving to the "procedural" history, the appellate court indicated that the present suit was filed in 1972. After more than a year of discovery proceedings, the parties agreed to a consent decree which was approved by the federal district court on December 24, 1975. Later, this phase of the lower court's deliberations ended with a declaration that the school district with the 1954-56 plan had met its obligation to create a unitary system and that resegregation had come about, not from board action, but as a result of demographic shifts influenced by policies of the federal government.

It was at this point that the dispute moved to the Eighth Circuit Court. Citing numerous Supreme Court decisions speaking directly to the first issue, the court reversed the district court's determination. It's conclusion was drawn from the Columbus opinion, namely, that the board "never actively set out to dismantle its dual system." The appellate court found also that the district court had erred in holding the board blameless for current segregated conditions. After analyzing the proposed approaches and concluding each has its strengths and weaknesses, the Eighth Circuit Court suggested various techniques.

> The Board's steadfast adherence to a student assignment policy which did not desegregate the schools and its use of intact busing, permissive transfers, and faculty assignments have preserved segregation in the school system.

With these holdings, the court moved to remedy.

There have been several developments since this Eighth Circuit Court ruling. By the end of April 1980 the Board had approved a new desegragation plan. Subsequently the district court concentrated on seeing that implementation of the exchange and transfer program with the suburban school districts was begun. By mid-August 1981, only four districts had agreed to participate. Consequently, on August 24, 1981 Judge Hungate of the federal district court ordered the drafting of a mandatory plan. The order directed the state defendants (Commissioner and Board), the United States and the St. Louis Board of Education:

> To develop and submit to the court by Feb. 1, 1982 a suggested plan of interdistrict school desegregation necessary to eradicate the remaining vestiges of government-imposed school segregation in the City of St. Louis and St. Louis County.

Appeals by the suburban districts before the Eighth Circuit Court were rejected and the districts are now taking evidence on the new plan.

5. Religion and schools is a hot issue today. The U.S. Supreme Court handled two such cases this term. Widmar v. Vincent[9] and Brandon v. Board of Education[10]

The appeals court, making an important distinction between college and university settings as contrasted to those of elementary and secondary schools, restricted the applicability of its holding.

> First, high school students necessarily require more supervision than do young adults of college age and this supervision necessarily poses a greater risk of entangling governmental authority in religious issues. Teachers ordinarily assigned to assist and supervise high school student groups may be thrust into a untenable position when assigned to supervise a prayer group. There is no evidence that. . . any student group at UMKC received supervision or assistance from any member of the University's faculty.
>
> Second, we recognize that since university students often rely on their college campus as their total community they can expect from it a greater accommodation of their religious beliefs.

The Supreme Court affirmed the decision for the students.

The other voluntary prayer case originated in New York State. In this instance, high school students sought permission from the school principal to conduct prayer meetings in a classroom immediately before the beginning of the school day. The principal denied their request as did the superintendent and school board. The students filed this action in 1979 charging violation of their First and Fourteenth Amendment rights to free exercise of religion, freedom of speech, freedom of association and equal protection. In addition to an injunction permitting them to use the classroom, the students sought monetary damages. The federal district court granted summary judgment for the defendants holding that the establishment clause precluded school officials from honoring the students' request.

Affirming this opinion, the Second Circuit Court analyzed the issues in detail beginning with the alleged free exercise violation. The court in rejecting this particular claim pointed out that "the school's rule does not place an absolute ban on communal prayer, nor are sanctions faced or benefits forfeited." The evidence revealed no need for any special accommodation by the school officials as we required in Widmar.

Turning to the school officials' contention that to grant the requested use of the facilities would violate the establishment clause, the court reapplied the Lemon test. A secular purpose was recognized in granting student use of the classroom. However, under the circumstances of this case, "prayer meetings would create an improper appearance of official support, and the prohibition against impermissibly advancing religion would be violated." Lastly, the required monitoring of the students' acitvities would constitute excessive entanglement. Thus, the court was convinced that school officials had a compelling "establishment clause" interest in denying the request.

In rejecting the free speech claims, the court pointed out that a high school unlike a university, for example, is not a "public forum." Finally, the court held the equal protection rights were not violated because all religious groups were denied access.

Again, the U.S. Supreme Court refused to grant certiorari. This action lends further support to the distinction between college and pre-college students on the "religion" issue.

6. Because the United States Supreme Court has not rendered a definitive opinion on school publications and the federal circuit courts are not in complete agreement, the scope of First Amendment protections remain uncertain. However, a 1979 opinion of the Second Circuit Court (Thomas v. Board of Education)[11] seems to present, for the time being, a reasonable guide in regard off-campus publications.

Judge Kaufman in writing the opinion observed: High school students in a small, rural New York community devised a publication patterned after the National Lampoon. After soliciting topics from their fellow students, they wrote articles on school lunches, cheerleaders, classmates, and teachers. Other articles dealt with such topics as masturbation and prostitution. Some of the initial

preparation occurred in a school classroom after school hours. Occasionally, a teacher was asked advice on questions of grammar and content. However, most of the work was done off-campus, outside of school hours. Completed copies were stored in the closet of the classroom, but copies were sold off-campus.

The controversy developed when the president of the school board learned of the paper's existence through her son. She put pressure on the school administrators to do something. Consequently, in consultation with the board they decided to impose a number of penalties including suspension, segregation from other students during study-hall periods, loss of privileges during suspension and inclusion of suspension letters in the students' files. The students were also directed to write essays on "the potential harm to people caused by publication of irresponsible and/or obscene writing." The trial judge after hearing denied both temporary and permanent relief, and the students appealed.

In considering the appeal, Judge Kaufman distinguished between the school officials' authority to control off-campus as contrasted to on-campus speech. The judge pointed out that in the community-at-large, the First amendment permits no exercise of prior restraint of publications. Noting that from the record the court was unable to determine the status of the sanctions or the relief requested, it expressed no opinion on the form of relief to be granted. The court reversed the lower court's ruling and remanded the case for further proceedings.

Judge Newman, in a concurring opinion, further distinguished between the First Amendment protections for on-campus and off-campus speech. Citing the Tinker ruling which held that the First Amendment protected the wearing of armbands in school which were not disruptive and the Cohen ruling which held that the First Amendment protected the wearing of a jacket in a courthouse corridor

which contained the slogan "Fuck the Draft," the judge formulated his conclusion. "The First Amendment gives the high school student the classroom right to wear Tinker's armband, but not Cohen's jacket."

The First Amendment also protects the right of Association. In a case that received nationwide attention, a federal district court judge in Rhode Island ruled on a complaint in Fricke v. Lynch[12] by a male high school student challenging the school principal's refusal to permit him to bring a male date to the senior prom. The boy claimed violation of his First and Fourteenth Amendment rights.

The conflict began the year before when another boy made a similar request concerning the junior prom. After the request was denied it became common knowledge in the community and school. Some students taunted and spit at him, and once someone slapped him. Thereafter, the principal or an assistant principal excorted him from class to class, and no further incident occurred. This boy was a friend of the plaintiff and the one he wished to take to the senior prom. When the plaintiff submitted his request, the principal denied it indicating that he feared disruption and for the safety of the two boys.

In the complaint, the plaintiff charged that the school official's actions violated his First Amendment rights of association and free speech and his Fourteenth Amendment right to equal protection of the laws. Analyzing the plaintiff's "communicative intent," the judge concluded that the student believed that his attendance would have "a certain political element and would be a statement for equal rights and human rights." The court was convinced that the school official's concern was not in suppressing the content of the message but in avoiding violence, but there was a suppression of free speech. However, denying permission to attend is not the "least restrictive alternative" to curtailing speech.

The court then analyzed the situation in light of Tinker. The judge said:

> . . . I have concluded that even a ligitimate interest in school discipline does not outweigh a student's right to peacefully express his views in an appropriate time, place, and manner. To rule otherwise would completely subvert free speech in schools by granting other students a "heckler's veto," allowing them to decide--through prohibiting and violent methods--what speech will be heard. The First Amendment does not tolerate mob rule by unruly school children. This conclusion is bolstered by the fact that any disturbance here, however great would not interfere with the main business of school--education.

Since the court found the free speech claim to be depositive, it did not deem it necessary to deal with the other claims. On the basis of a showing then of "probable success on the merits" and "irreparable harm," the court granted the preliminary injunction sought.

The current conservative mood in this country is reflected in an increasing number of objections to books used in the public schools. When school boards either by their own initiatives or in response to community pressures ban books, their actions are frequently challenged by other groups of parents, pupils or teachers as a violation of their constitutional rights. The law is by no means settled with respect to this controversy as illustrated by the decisions of two United States Circuit Courts.

The book banning in Pico v. Board of Education[13] was precipitated by the attendance of three board members at a conference of a conservative group called Parents of New York United. At this meeting they were given an annotated list of "objectionable" books. During that school year, the school board ordered removal from the school library of three works of fiction, four autobiographies, two anthologies, and one work of non-fiction. The superintendent objected to the order pointing out that the district had a policy calling for the review of books by a committee and that by following the policy public furor could be avoided. However, the board went ahead with its plan, and as the superintendent had pre-

dicted, much publicity resulted and dissention developed in the community. The committee that was finally appointed recommended the return of six books to the library, but the board ordered the return of only two. At this point, five students sued the board for violating their First Amendment rights. After the federal district court had granted summary judgment for the board, the plaintiffs appealed.

A divided court reversed the holding for the board and remanded the case for trial. One factor on which the decision turned was what the writer of the opinion termed the "unusual and irregular" intervention by the board. He took the position that the evidence supported the plaintiffs' claim of constitutional violations and would have so ruled. However, the other member of the majority merely indicated that summary judgment was inappropriate. The opinion directed that opportunity be given the board to prove its actions and motives did not violate the First Amendment. The dissenting judge would have sustained the summary judgment for the board maintaining the removal of the books was within its discretion. The case is now before the Supreme Court.

7. In most states, boards of education have the authority to set graduation requirements over and above those established by the state. The disputes that develop over the denial of a diploma often involve allegations that such requirements are invalid or that school officials acted arbitrarily and unreasonably in enforcing the requirements. A Missouri case, State ex rel. Miller v. McLeod,[14] provides a fitting example.

A former high school student sued school officials after they refused to issue her a diploma. The state court of appeals affirmed the judgment of the trial court in full, ordering the diploma be granted.

In identifying the substantial evidence the court drew statements from the trial court's list of findings of fact. The court's majority was apparently impressed by several of these. The girl completed all but 27 days of her eighth semester having earned 21½ units of credit. She quit school to work at a factory job in which she engaged in industrial sewing, one of the courses she had been taking. Her father had appeared before the board to request a waiver of the graduation requirements. The superintendent had issued a work permit to the girl. Other students had graduated with as few as 20 credits or who had not completed the 7th semester.

A dissenting judge was convinced that school officials had not acted unreasonably or arbitrarily in denying the diploma. In fact his reading of the record persuaded him that the girl will be the only student to receive a diploma without satisfying the requirements. In regard to the exceptions cited by the majority, the judge pointed out that all who had graduated with 20 credits had completed eight full semesters while the plaintiff had not. Finally, the dissenting opinion noted among other points that the father had requested a "waiver of the requirements" not credit for on-the-job training. The principal's testimony, in fact, indicated that the father rejected the alternative ways of satisfying the requirements when they were explained to him.

8. Violence in public schools had received much attention in the past few years. Its wide-spread existence has been recognized in the general news coverage, in the proceedings of federal and state legislative bodies and in the journals and meetings of professional educators. One of the obvious results of violence is personal injuries which frequently result in lawsuits. An Illinois case, Gammon v. Edwardsville Community School District,[15] provides some insight into the liability of school officials and employees in such situations.

The plaintiff, an eighth grade student learned of threats against her by another student. She avoided confrontation with this person and sought help from her guidance counselor. The counselor met with the two students in an attempt to resolve the problem. When the student who had made the threat left the office, the counselor was aware that she was still very angry, but the counselor did not notify disciplinary personnel nor the playground supervisors.

After assurances from her classmates that the other girl no longer intended her harm, the plaintiff went to the schoolyard. There, the girl struck her in the eye with her fist. The orbit was fractured necessitating surgery to correct.

The injured girl sued the school district charging that her injuries resulted from the negligence of the counselor. Because of the state's so-called in loco parentis law (Ill. Rev. Stat. 1977, ch. 122 pars. 24-24 and 34-84a) school personnel are not liable for "common negligence:" an injured party must prove that the conduct of the accused was "wanton and wilful." In the instant case, the jury found that the evidence supported this charge. However, the trial judge refused to accept the jury verdict and ruled otherwise. The plaintiff appealed.

The appellate court noted that the jury verdict must be accepted if supported by the evidence. Since the counselor was aware of the danger to the girl and of the offending student's prior conduct but did not take adequate steps to protect her, the court concluded the jury could properly decide that the counselor's conduct was wanton and wilful. The lower court's decision was reversed, and the jury's verdict was reinstated.

Conclusion

Considering the nature of the disputes and the sample cases, perhaps the title should be changed to "Why Will Parents Take You to Court?" Another factor accounting for the volume of cases which should not be ignored (even though I am slipping over into another meaning of the topic) is the intervention and support of various advocacy groups. The number of suits have undoubtedly been increased by their activities.

The important question though is: "What can you do to avoid going to court or to at least win when you get there?"

1. Make sure you are informed concerning students rights and stay informed.

This requires that you have a basic understanding of the federal constitution and laws as well as state statutes and how the courts have interpreted them in regard to school operation.

2. Make sure your rules, practices, and procedures are consistent with legal requirements.

There may be areas of doubt where you will need to seek competent legal advice.

3. Make sure that you adequately document situations which could lead to legal disputes (for example, the suspension of a student).

These records could mean the difference between winning and losing in court.

4. Make sure threats to student safety are anticipated and adequate precautions taken.

The courts will require only that you exercise "reasonable care" in this regard. If you do, you are not likely to be found liable.

Follow these suggestions and the threat of litigation should be less likely to keep you awake at nights!

Thank you

CASE CITATIONS

1. 497 F. Supp. 403 (E.D. N.C. 1980).
2. 635 F.2d 342 (5th Cir. 1981).
3. 443 F. Supp. 1235 (D. Conn. 1978).
4. 607 F.2d 588 (2d Cir. 1979).
5. 621 F.2d 607 (4th Cir. 1980).
6. 403 U.S. 651 (1977).
7. 101 S.Ct. 72 (1980).
8. 620 F.2d 1277 (8th Cir. 1980).
9. 635 F.2d 1310 (8th Cir. 1980) cert. granted 49 U.S.L.W. 3617 (U.S., Feb. 24, 1981).
10. 635 F.2d 971 (2d Cir. 1980).
11. 607 F.2d 1043 (2d Cir. 1979).
12. 491 F. Supp. 381 (D.R.I. 1980).
13. 638 F.2d 404 (2d. Cir. 1980) cert. filed 50 U.S.L.W. 3061 (U.S., Aug. 18, 1981).
14. 605 S.W.2d 160 (Mo. App. 1980).
15. 403 N.E.2d 43 (Ill. App. 1980).